fixed for those hours each day was a price established by competitive bidding on the Board. The court therefore found as the decisive fact that it "had no appreciable effect on general market prices"; and as good business reasons appeared for the adoption of the rule, which, within its narrow limits, was shown to have improved market conditions and even promoted competition in certain respects enumerated by the court, the decision sustaining its legality very properly followed. For other discussions of the "rule of reason" as applied to the construction of the Sherman Act, see COMMENTS, p. 1060, *supra*, and (1917) 27 YALE LAW JOURNAL, 139.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE OF CHILD—CONSTRUCTION OF STATUTE.—The New Jersey Railroad Law (3 Comp. St. 1910, p. 4245) sec. 55, declares that if "any person shall be injured by an engine or car while walking, standing or playing on any railroad," except at lawful crossings, he shall be deemed to have contributed to the injury sustained and shall not recover damages. The plaintiff, a boy less than seven years old, had been playing marbles near a railroad siding and was injured by the moving of a car while he was trying to extricate his marble from under the car. *Held*, that the plaintiff was barred from recovery. Day and Clarke, JJ., *dissenting*. *Erie R. R. Co. v. Hilt* (1918, U. S.) 38 Sup. Ct. 435.

The lower federal courts had construed this statute merely as declaratory of the common law and not as declaring with sufficient clearness an intention to charge children, however immature, with contributory negligence. *Erie R. R. Co. v. Swiderski* (1912, C. C. A. 3d) 197 Fed. 521. A state court had taken the opposite view. *Barcolini v. Atlantic City, etc. Co.* (1911, Sup. Ct.) 82 N. J. L. 107, 81 Atl. 494. The principal case follows the construction of the state court, although not the court of last resort in the state, and seems to approve such construction. It appears a rather harsh interpretation of the statute, and the arguments of the lower federal courts are thought to be more persuasive.

PUBLIC SERVICE CORPORATIONS — REGULATION OF RATES — REGULATION OF WATER COMPANY WHOSE FRANCHISE HAD EXPIRED.—After the expiration of the complainant water company's franchise the City of Denver passed an ordinance declaring the company to be a mere tenant at sufferance and fixing the rates it should thereafter charge. The company contended that these rates were confiscatory and sued to enjoin the enforcement of the ordinance. *Held*, three judges dissenting, that the company was entitled to an injunction, that the rate ordinance should be construed as granting a franchise of indefinite duration, and that in determining the reasonableness of its rates the plant was to be valued as a plant in use and the item of "going value" was to be considered. *Denver v. Denver Union Water Co.* (1918, U. S.) 38 Sup. Ct. 278.

The case is of interest both in respect to the holding that the regulatory ordinance granted a license for an indefinite term, and in respect to the reaffirmation of the rule that "going value" is an element to be considered in rate regulation. For a discussion of the latter point, see (1918) 27 YALE LAW JOURNAL, 386.

STATUTE OF FRAUDS—PAROL AGREEMENT WITH TENANT IN POSSESSION FOR FUTURE TENANCY—HOLDING OVER AFTER LANDLORD'S REPUDIATION.—A landlord agreed with the tenant in possession under a lease expiring July 31, 1915,

for a tenancy *in futuro* to continue eight months from the expiration of the original term. But thereafter, on May 11, 1915, the landlord made a lease to other parties and notified the tenant to surrender possession on August 11, 1915. In a suit by the landlord for rent from August 1st to August 11th, the defendant counterclaimed for damages caused by breach of the parol agreement to extend the lease. *Held*, that the parol agreement was within the Statute of Frauds and was not validated by the tenant's possession after the expiration of the original term because prior thereto it had been repudiated by the landlord. *Buschman Co. v. Garfield Realty Co.* (1918, Ohio) 119 N. E. 142.

When a yearly tenant holds over without any agreement he is presumed to make a contractual proposal for a yearly tenancy which the landlord accepts by acquiescing in his possession or by the receipt of rent. When a yearly tenant holds over pursuant to a prior oral agreement his continued possession acquiesced in by the landlord, is equivalent to an entry into possession under the new agreement and takes it out of the Statute of Frauds. *Bumiller v. Walker* (1917) 95 Oh. St. 344, 116 N. E. 797. But if the landlord has already repudiated the prior oral agreement, as in the principal case, then the tenant's holding over cannot be treated as a delivery of possession under the new agreement, so as to remove the bar of the Statute. The principal case is believed to be a sound decision of a point on which there is little precise authority.

STATUTE OF FRAUDS—PART PERFORMANCE—SPECIFIC PERFORMANCE OF ORAL CONTRACT RELATING TO WATER RIGHTS.—The defendant owned a water right. He orally agreed with the plaintiff that if the latter would rebuild the flume which carried the water, he would give him a right to one-fourth of the water and a right of way across the defendant's land for the flow of the water. Plaintiff rebuilt the flume in pursuance of the agreement and, on defendant's refusal to carry out the bargain, asked for specific performance. *Held*, that plaintiff was entitled to the relief asked. *Tucker v. Kirkpatrick* (1917, Or.) 169 Pac. 117.

The court took the view that there had been sufficient "part performance" to "take the oral agreement out of the statute of frauds" according to the Oregon precedents. Apparently the facts in the principal case presented a novel situation somewhat unlike those involved in previous adjudications. However, the analogy between what had been done and the situation in the case of a so-called "parol license" which "becomes irrevocable when acted upon" by the licensee seems sufficiently close to justify the present decision.

TAXATION—CORPORATION INCOME TAX—INCOME DERIVED FROM EXPORTATION.—The plaintiff corporation paid under protest a federal income tax computed upon the net income derived from its business of exporting goods to foreign countries. It contended that such tax was in violation of Art. I, sec. 9, cl. 5 of the Constitution, providing that "no tax or duty shall be laid on articles exported from any state." *Held*, that the tax was valid. *William E. Peck & Co. v. Lowe* (1918, U. S.) 38 Sup. Ct. 432.

While it has been held that the exportation must be free not only from a tax on the articles exported but also from any tax which directly burdens the exportation, the tax in question is unlike any of those previously condemned. It burdens exportation no more directly than do general taxes upon articles intended for exportation, and these are admittedly valid.